STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _2024-045VW_____
Application No.: 2024-033BSN/2023-524C

PINE ISLAND PARK LLC,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULES 67-48.004(3)(c), 67-21.003(8)(c), 67-21.003(11) FLORIDA ADMINISTRATIVE CODE (EFFECTIVE JUNE 28, 2023), AND 67-60.006(1) FLORIDA ADMINISTRATIVE CODE (EFFECTIVE JULY 6, 2022)

Petitioner, Pine Island Park LLC, a Florida limited liability company ("Petitioner"), pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, through its undersigned counsel, hereby petitions Florida Housing Finance Corporation ("Florida Housing") for a waiver of Rules 67-48.004(3)(c) F.A.C.(06/28/2023), 67-21.003(8)(c) F.A.C.(06/28/2023), 67-21.003(11) F.A.C. (06/28/2023), and 67-60.006(1) F.A.C. (07/06/2022) (the "Rules"), in order for Petitioner to pursue issuance of tax exempt bonds by the Housing Finance Authority of Broward County ("HFA") instead of utilizing Florida Housing issued tax exempt bonds. In support of this Petition, Petitioner states as follows:

A. PETITIONER AND THE DEVELOPMENT

1. The name, address, e-mail address, and telephone number for Petitioner and the qualified representative is:

Pine Island Park LLC
Attn: Lewis V. Swezy
7735 NW 146 Street, Suite 306
Miami Lakes, Florida 33016

E-mail: lswezy@centennialmgt.com
Telephone: (305) 720-3350

2. The name, address, e-mail address, and telephone numbers of Petitioner's counsel is:

Nicholas W. Heckman, Esq.
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801-4961
Email: nick.heckman@nelsonmullins.com
Telephone: 407-669-4241

3. On August 3, 2023, Petitioner, submitted Application No. 2024-033BSN/2023-524C (the "Application") in response to RFA 2023-205 for SAIL Financing of Affordable Multifamily Housing Developments To Be Used In Conjunction With Tax-Exempt Bonds and Non-Competitive Housing Credits (the "RFA") seeking (i) Florida Housing issued Multifamily Mortgage Revenue Bonds ("MMRB"), in which such bond proceeds will be loaned to Petitioner, in conjunction with (ii) State Apartment Incentive Loan ("SAIL") program funds; (iii) Extremely Low Income ("ELI") funds; (iv) National Housing Trust Fund ("NHTF"); and (v) non-competitive housing credits ("Housing Credits") in order to finance the construction, development and operation of a 120-unit affordable multifamily housing development located in Broward County, Florida to be known as Pine Island Park (the "Development").

4. On December 20, 2023, the Petitioner received its invitation from Florida Housing to enter into credit underwriting with a preliminary award for: (i) Florida Housing issued MMRB's in the amount up to $24,000,000 (the "MMRN Loan"), in conjunction with (ii) SAIL and ELI funds in an amount up to $6,509,880 (the SAIL base loan of $5,759,880 (the "SAIL Loan"), plus ELI funds of $750,000 (the "ELI Loan")); (iii) NHTF funds in an amount of $1,575,000 (the "NHTF Loan," and collectively with the MMRN Loan, the SAIL Loan and the

ELI Loan, referred to herein as the "Loans"); and (iv) non-competitive Housing Credits. The Petitioner accepted its invitation to credit underwriting on December 21, 2023.

5. Since the submission of the Application, the Development experienced substantial cost increases that have strained feasibility. Cost increases have affected construction hard costs, interest rates on Petitioner's construction financing, various other operating costs, such as, in particular, Petitioner's insurance. Such increases have left a significant funding gap in Petitioner's budget. In order to address such funding gap, the Petitioner has applied for additional subsidy funding from Broward County (the "County") and has received a preliminary award of up to $5,400,000 from the County (the "County Funding"). However, as a condition to receiving the County Funding, when tax exempt bonds are to be used as a source for funding for a project, the County requires all recipients of the County Funding to have any such bond financing for the proposed development to be issued by the HFA.

6. Petitioner therefore respectfully requests a waiver of the Rules in order to allow the Petitioner to be issued MMRB bonds from the HFA opposed to Florida Housing in order to fund the gap in financing and successfully construct the Development.

B. <u>TYPE OF WAIVER</u>

7. The waiver being sought is permanent in nature.

C. <u>RULES FOR WHICH A WAIVER IS REQUESTED</u>

8. Petitioner requests a waiver from Rule 67-48.004(3)(c), F.A.C. (2023), which provides, in relevant part, as follows:

> "(3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:
>
> ….

(c) Program(s) applied for;"

9. Petitioner requests a waiver from Rule 67-21.003(8)(c), F.A.C. (2023), which provides, in relevant part, as follows:

> "(3) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as follows:
>
> ….
>
> (c) Program(s) applied for;"

10. Petitioner requests a waiver from Rule 67-21.003(11), F.A.C. (2023), which provides, in relevant part, as follows:

> "(11) The withdrawal by the Applicant from any one program will be deemed by the Corporation to be a withdrawal of the Application from all programs."

11. Petitioner requests a waiver from Rule 67-60.006(1), F.A.C. (2022), which provides, in relevant part, as follows:

> "The failure of an Applicant to supply required information in connection with any competitive solicitation pursuant to this rule chapter shall be grounds for a determination of nonresponsiveness with respect to its Application. If a determination of nonresponsiveness is made by the Corporation, the Application shall be considered ineligible."[1]

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1 The RFA required, among other things, that if the Applicant intends to use County HFA-issued Tax-Exempt Bonds: "[the applicant must] Provide, as Attachment 8 to Exhibit A, a letter, executed by the chair or vice chair of the governing body, mayor, or deputy mayor, city manager or assistant city manager, county manager/administrator/coordinator or assistant county manager/administrator/coordinator, executive director or assistant executive director, or by an individual occupying a position reasonably equivalent to any of the foregoing, as applicable, of the entity issuing the Tax-Exempt Bonds, that (a) confirms that the Applicant has submitted an application for Tax-Exempt Bonds for the Development proposed in this RFA, (b) states the amount of the Applicant's Bond request, and (c) confirms that the closing on the Bonds has not occurred and will not occur prior to the Application Deadline for this RFA; and (ii) The Applicant must include the anticipated amount of such Bond financing on the Construction/Rehab Analysis and the Permanent Analysis…" Given Petitioner's intent to finance the Development with bonds issued by the HFA, Petitioner did not include the subject letter in Attachment 8 of its Application. Petitioner simultaneously requests a waiver of this RFA requirement in conjunction with this Petition.

D. STATUTES IMPLEMENTED BY THE RULES

12. The Rules implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"): Section 420.5099, Allocation of the low-income housing tax credit; Section 420.502, Legislative findings; Section 420.507, Powers of the corporation; Section 420.508, Special powers; multifamily and single-family projects; and Section 420.509, Revenue bonds; the statutes relating to the State Apartment Incentive Loan Program contained in Section 420.5087 of the Florida Statutes.

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULES

13. Petitioner requests a waiver from the Rules because Petitioner may not feasibly be able to construct the Development and otherwise proceed to closing without allowing Petitioner to be issued HFA bonds opposed to Florida Housing issued bond. But for the unexpected increases in costs, in particular insurance costs, Petitioner would have continued to pursue issuance of the bonds via Florida Housing. Such increases in costs lead to a gap in the financing of the Development and Petitioner has been able to successfully find additional financing resources needed to construct the Development adequately and efficiently. However, as provided above, the only way for Petitioner to receive such funding from the County, the HFA opposed to Florida Housing, must issue the Bonds. As such in order for Petitioner to successfully construct, develop and operate the Development, Petitioner must utilize bonds issued by the HFA opposed to bonds issued by Florida Housing. Bond allocation is currently oversubscribed throughout Florida and the additional funding subsidy from the County will preserve Florida Housing's bond allocation to fund additional developments. By approving the request, Florida Housing can ensure that bond

allocation is being used as efficiently as possible to maximize the production and preservation of affordable housing.

14. Under Section 120.542(l), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when: (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat.

15. For the reasons stated above, application of the Rules would have a material adverse effect on the Development's viability. Strict application of the Rules would create a substantial hardship for Petitioner in that it may not be able to find additional financing to close the gap in its budget and would therefore not be able to close financing of its MMRB bonds, the SAIL Loan, the ELI Loan, or the NHTF loans which would otherwise make the construction of the Development not feasible. If this requested waiver is not granted, Petitioner will suffer a substantial and unnecessary economic and operational hardship. Without the HFA issued bonds, the Development may not be able to cover the gap in its budget and may render the Development financially infeasible. Thus, denial of the requested waiver would deny Broward County of this much needed affordable housing.

16. A waiver of the Rules' requirements would serve the purposes of the implementing statutes, and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to households of limited means.

17. Petitioner believes that a waiver of the Rules will serve the purposes of the Statute, which is implemented by the Rules. The Florida Housing Finance Corporation Act (Section 420.501, et. seq.) was passed to increase the supply of affordable rental housing. Furthermore, the purpose of the Housing Tax Credit Program is to encourage the development of low-income housing in the State. By granting this waiver and permitting Petitioner to change the bond issuer from Florida Housing to the HFA, as requested in this petition, Florida Housing would further its goal of increasing the supply of affordable housing for persons of low-income by allowing the Petitioner to construct and operate 120 much needed affordable housing units in Broward County.

18. In this instance, Florida Housing has jurisdiction to grant a waiver of the Rules and Petitioner meets the standards for a waiver of the Rules.

F. ACTION REQUESTED

19. WHEREFORE, Petitioner respectfully requests that Florida Housing: (i) Grant Petitioner a waiver from Rules 67-48.004(3)(c), 67-21.003(8)(c), 67-21.003(11) and 67-60.006(1) F.A.C., so that Petitioner may pursue issuance of the bonds by the Housing Finance Authority of Broward County instead of Florida Housing; (ii) Grant this petition and all relief request therein; and (iii) Grant such further relief as may be deemed appropriate.

Respectfully submitted this 6th day of August, 2024.

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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org,

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

This 6th day of August, 2024.



Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356